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February 11, 1993

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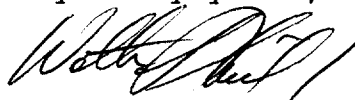
Reply Comments of Multiplex Technology, Inc.
MM Docket No. 92-266

Dear Ms. Searcy:

Enclosed for filing on behalf of Multiplex Technology, Inc., please find an original and nine (9) copies of reply comments in the above-captioned Notice of Proposed Rulemaking proceeding.

If you have any questions with regard to the enclosed please do not hesitate to contact the undersigned.

Very truly yours,


Walter Steimel, Jr.

Enclosures

cc: Multiplex Technology, Inc.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of the Cable)
Television Consumer Protection)
and Competition Act of 1992)

Rate Regulation)

MM Docket No. 92-266

REPLY COMMENTS OF MULTIPLEX TECHNOLOGY, INC.

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TABLE OF CONTENTS

I.	Introduction	1
II.	Protection of Competition	2
III.	First Tenets of Competition -- Unbundling, Actual Costs and Prohibition of Promotional Offerings	4
IV.	Establishment and Recognition of Demarcation Point	7
V.	Additional Tenet of Competition -- Fictional Costs and Charges for Additional Outlets	8
VI.	Smoke Screen Issues	9
VII.	Small Systems Do Not Deserve Complete Exemption	10
VIII.	Conclusion	11

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REPLY COMMENTS OF MULTIPLEX TECHNOLOGY, INC.

Multiplex Technology, Inc. ("Multiplex"), through its attorneys, hereby submits these reply comments in the above-captioned Notice of Proposed Rule Making.^{1/}

I. Introduction

As stated in its initial comments, Multiplex is primarily interested in ensuring that competitive markets are fully developed for the provision of home video services and equipment. In this regard, Multiplex noted in its initial comments that the Commission's extensive experience in the field of common carrier regulation, and efforts to enhance competition in that arena, should serve as a guide for formulation of cable operator regulations in this proceeding. These prior pro-competitive

^{1/} Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, MM Docket No. 92-266, Notice of Proposed Rule Making, FCC 92-544 (released December 24, 1992) ("NPRM").

policies include unbundling CPE from telephone service, prohibiting tying arrangements between equipment and service and prohibiting required connections of telephone company equipment to subscriber lines.^{2/}

Multiplex recognizes that the standards applicable to common carriers under Title II of the Communications Act do not apply to cable companies. Nevertheless, the pro-competitive Commission policies cited herein also arise from the general provisions of Title I of the Communications Act which give the Commission broad authority to address these competitive issues and prohibit anti-competitive practices in the cable television industry which are an inherent part of the Cable Act Amendments.^{3/}

II. Protection of Competition

A primary goal of the Cable Act Amendments, as properly recognized by the Commission, is the enhancement of competition, especially in the provision of installation and equipment. This commitment to competition is reflected in the fact that the Cable

^{2/} See, e.g., Implications of the Telephone Industry's Primary Instrument Concept, CC Docket No. 78-36, Report and Order, 43 RR 2d 1205, 1206, and cases cited 1206 n. 2 (1978) ("Instrument Concept Order").

^{3/} See Sections 154(i) and 601(6), 47 U.S.C. §§154(i), 601(6). Anti-competitive conduct has long been a concern of the Commission. NBC v. United States, 319 US 190 at 222-23 (1943); United Telephone Company of Ohio, Docket No. 19072, Memorandum Opinion and Order, 20 RR 2d 602, 606 (1970).

Act Amendments impose less regulation on cable companies when there is "effective competition" in a service territory.^{4/} References to the encouragement of competition are scattered throughout the amendments.

The Commission must review the recommendations of the parties with this ultimate goal of competitive stimulation in mind. The fact is that an active competitive market currently exists is evidenced by the activities of Multiplex and other equipment providers, and from the existence of the host of competitive installation providers with whom Multiplex works. In the future, with the adoption of proper regulations by the Commission, even more competition will flourish, as is evident from the participation of the telephone companies in this proceeding.^{5/}

The Commission should be aware of the impact of its regulations on equipment redundancy and the perpetuation of wasteful uneconomic incentives. Artificial non-cost based pricing, such as that used to either stifle competition or recover monopoly profits, results in the introduction of uneconomic incentives in the equipment and installation markets. The offering of free or below cost equipment or inside cabling installation could also create an incentive for redundant cabling in homes where separate

^{4/} See Sections 601(6) and 623(a)(2).

^{5/} This competition has already begun. See "Ring In The New, Telephone Service Seems On The Brink Of Huge Innovations", Wall St. Journal, pp. 1,3, February 10, 1993.

cabling would be used for the delivery of other video media. The Commission has attempted to avoid these incentives in the past in favor of economic incentives driven by costs in a fully competitive market. The Commission should strive to do the same here.

III. First Tenets of Competition -- Unbundling, Actual Costs and Prohibition of Promotional Offerings

Most of the parties filing comments in this proceeding appear to recognize that unbundling is required by the Cable Act Amendments and is an inherent component of this proceeding. A few parties, including most notably NCTA,^{6/} still appear to believe that bundling is not prohibited by the Cable Act Amendments. They also argue that bundling and control over equipment by cable companies may be necessary to prevent or control theft of service.^{7/} The basic fact is that the unbundling of installation, service and equipment is mandated by the Act. The Act states the clear intention of Congress that there is to be competition, where possible, in the provision of cable TV service and its elements.

The Commission must recognize that the arguments against competition are similar to the arguments made prior to the complete unbundling and detariffing of common carrier customer provided

^{6/} Comments of the National Cable Television Association, Inc., MM Docket No. 92-266, filed January 27, 1993 ("NCTA Comments").

^{7/} NCTA Comments at pp. 46-7.

equipment (CPE). Initially, common carriers had attempted to argue issues such as cost savings, harm to the network and guaranteed service quality in support of maintaining control over equipment and installation. Not only were these arguments ultimately rejected, history has demonstrated that there was never any substance to these arguments.^{8/} The fostering of competitive markets has caused the development and introduction of a vast array of new products and services without theft or harm to the network.^{9/}

NCTA argues that Congress sought to ensure that cable operators not be allowed to extract excess profits through unbundling equipment and installation.^{10/} This argument of NCTA flies in the face of both Congressional intent and even rudimentary economic theory. The provision of cable television signal, that is the signal to each subscriber, is the natural monopoly service from which cable operators can, and have, extracted monopoly profits. As demonstrated above, the competitive markets are currently those for equipment and installation services. If not constrained, monopoly providers, such as cable operators, will use the monopoly profits derived from the provision of service to underwrite the

^{8/} See Instrument Concept Order, at 1206.

^{9/} Satellite distribution companies have been able to deal effectively with theft of service issues through the use of encryption decoders. For cable companies the problem is less evident as they can either turn off a cable or use such encryption technologies.

^{10/} NCTA Comments at 47, 52.

cost of equipment and installation activities in order to damage or defeat effective competition in these areas. The comments of NCTA only prove that this is precisely the intent of the cable operators and the Commission must take steps to prohibit both direct and indirect bundling of equipment, installation and service.

Bundling can also be achieved through indirect means, such as pricing manipulation.^{11/} Promotional offerings and provision of equipment and installation below actual costs create incentives to acquire equipment, installation and service from the cable company, resulting in indirect bundling. These promotional and below cost offerings are underwritten by the monopoly service, and do not reflect true economic cost. As such, they distort the competitive market and can cause the prices for cable service to increase.

There is nothing to prevent cable operators from offering promotional rates for initial service terms in order to induce new subscribers to take service. This type of promotional offering confined to the same service does not employ anti-competitive cross-subsidization. Promotional offerings focused on equipment and installation, however, primarily support anti-competitive behavior. The competitive market, without such anti-competitive interference, will supply the most reasonable rates for equipment

^{11/} That pricing manipulation can be a means of effectuating bundling should not be new to the Commission.

and installation in geographic areas where reasonable cable service is offered.

IV. Establishment and Recognition of Demarcation Point

Congress intended to permit subscribers to install personally owned systems over which cable service could be provided in an integrated manner, permitting flexibility to interchangeably use cable operator or subscriber provided video inputs. In order to accomplish this goal, cable television service must be provided on a stand alone basis to a demarcation point or network interface, similar to that used for competitive telephone service, after which the subscriber has a choice of independent options. A subscriber can then request installation and/or equipment from the cable operator, or from a variety of competitive installation and/or equipment providers.

This issue of the demarcation point has not been adequately addressed in this docket, but is an integral part of achieving the goals of this proceeding. A natural demarcation point has already been adopted de facto in the Part 76 Cable Technical Standards which, although instituted prior to passage of the Cable Act, was adopted after the enactment of the amendments and incorporates the purpose and intent of the Act. In those rules, cable operators are required to provide a signal level of

not less than 0 dBmV at a point 30 feet from the subscriber tap.^{12/}

As the responsibility of the cable operator has been defined at the subscriber terminal in the Part 76 rules, the Commission should adopt the concept of the subscriber terminal as the point where cable operator service obligations, and bundled charges, end. Any other equipment or installation provided past that point should be competitively provided at actual cost, permitting the subscriber flexibility to choose among competitive providers of equipment and installation.

V. Additional Tenet of Competition -- Fictitious Costs and Charges for Additional Outlets

As noted above, the obligations of cable operators are already defined by Commission rule. The use of a cable operator's signal beyond that point is within the discretion of the subscriber. Subscribers may place splitters or other equipment at and beyond that point, and are only prohibited from accessing premium or other pay channels which require additional decoders and separate charges for service.

As the obligations of cable operators are established, the connection of additional equipment to a subscriber's system creates no additional operating costs for the cable operators.

^{12/} See Section 76.605(a)(3).

Additional sets or outlets do not "draw down" any signal from the cable operator or require new system engineering or cable operator provided amplification. If a subscriber chooses to add additional outlets any amplification requirements are the responsibility of the subscriber.

VI. Smoke Screen Issues

Arguments made by some of the commentators in this proceeding that charges for basic equipment be set at cost but that equipment which can be used for both basic and other service not be subject to that restriction are inconsistent with the regulatory scheme mandated by Congress and tentatively recommended by the Commission. All equipment can be said to have some role in carrying premium or pay channels and therefore would continue to be bundled into cable television service if such arguments were accepted by the Commission. These arguments are only a smoke screen for continued bundling and anti-competitive behavior by certain cable operators. The proper method of analysis is to determine that all equipment used in the provision of basic service must be unbundled and separately offered at actual cost, and only specific components related to premium or pay channels may be separately priced.

The theft of service issues are also, to a large degree, a red herring meant to distract the attention of the Commission.

Satellite companies are successfully implementing special encryption decoders which are addressable by the satellite company to contend with the theft of service. A variety of restrictions or requirements can be added to the Commission's equipment rules to effectively address concerns regarding theft of service. Theft of basic service can be controlled by disconnecting service at the subscriber tap. The likelihood of theft of premium channels is no different whether equipment is provided by cable operators or competitive suppliers.

VII. Small Systems Do Not Deserve Complete Exemption

A number of commentators seek to exempt small systems from the requirements of the amendments, especially the rate regulation requirements. The amendments, however, do not permit the total exemption of small cable companies, but permit the Commission to adopt regulations which decrease the burden of compliance for these companies.^{13/} Many of the issues of concern to Multiplex, such as prohibition of bundling, additional outlet charges and promotional offerings, will impose no additional costs on small system operators. Likewise, the adoption of regional benchmark rates should have little impact on small cable operators. There is no justification, therefore, for the complete exemption of these operations.

^{13/} See Section 623(i).

In addition, many of the small cable systems are satellite-fed systems which specifically target high income or high profit areas such as concentrated condominium or townhome residential communities and/or bedroom communities with above average incomes.^{14/} In the case of townhome communities, the cost of delivering cable service to each home may actually be substantially less than that recognized in larger cable systems. Subscribers in these communities are likely to be more interested, and have more income available for investment in alternative video delivery systems and multiple uses of in-home cabling and equipment. Therefore, exemption of small systems from the rules, specifically the bundling, additional outlet and promotional offering prohibitions, could substantially harm one of the largest markets for competitive suppliers of cable TV equipment.

VIII. Conclusion

In conclusion, Multiplex reiterates its comments that in order to preserve the competitive markets for installation and equipment currently in existence, and to permit further expansion of these competitive markets with the least amount of regulatory oversight, the Commission should adopt proposals which require the offering of equipment and installation at actual cost, and prohibit

^{14/} These systems are akin to smart building operators who bypass local exchange telephone company operations.

the bundling of equipment installation and service, promotional offerings and charges for additional outlets.

Cost restrictions are a key ingredient of the regulations under consideration. Unless an actual cost restriction is placed on equipment and installation offerings, cable operators will have a powerful incentive to use the profits from their monopoly operations to subsidize other operations subject to effective and growing competition. As the Commission has established standards for cable operator delivery of service, it is apparent that additional subscriber connections incur no service-related cost or obligation to the cable television provider. Any costs which are incurred are those incurred by the subscriber for equipment and/or installation, and have no impact on the recovery of service expenses by the cable operator. There is no justification, therefore, for additional service charges for additional outlets.

February 11, 1993

Respectfully submitted,

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